LOS ANGELES WATERKEEPER®

May 7, 2018

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gerald Wahlin
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Compton CA 90222-1420

David Schwan
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424 East Dixon Avenue
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To Whom It May Concern:

MAY 15 2018

I. Introduction

A. Notice of Intent to File Suit Under the Clean Water Act

I write on behalf of Los Angeles Waterkeeper ("Waterkeeper") regarding violations of the Clean Water Act[1] ("Act") and California's General Industrial Storm Water Permit[2] occurring at the industrial facility owned and operated by AAA Plating & Inspection, Inc. ("AAA" or "Operator") at and/or near 210-242 East Dixon Avenue in Compton, California ("Facility"). According to the filings with California's Secretary of State, AAA is owned by Gerald Wahlin in his capacity as Chief Executive Officer and Chief Financial Officer (as well as Agent for Service of Process), and David Schwan in his capacity as Secretary (collectively "Owners").

This communication ("Notice Letter") is prepared pursuant to the Act, 33. U.S.C. §§ 1365(a) and (b), and is sent to you and AAA as the responsible Operator and/or Owner of the Facility in order to: 1) detail violations of the Act and Permit occurring at the Facility, and 2) provide formal notice that Waterkeeper will file an enforcement action in Federal Court against AAA for violations of the Act, 33 U.S.C. §§ 1311, 1342. Waterkeeper is willing to discuss effective remedies, and thus, encourages AAA to engage in negotiations as soon as possible.

B. Los Angeles Waterkeeper

Waterkeeper is a non-profit public benefit corporation founded in 1993 and organized under the laws of California and is located at 120 Broadway, Santa Monica, California 90401. Waterkeeper is an organization of the Waterkeeper Alliance, which is the world's fastest growing environmental movement.

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[1] Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*

[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ. Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ ("1997 Permit"), which as of July 1, 2015, was superseded by Order No. 2014-0057-DWQ ("2015 Permit"). As explained herein, the 2015 Permit and the 1997 Permit contain the same fundamental requirements and implement the same statutory mandates. Waterkeeper may herein refer to the two versions interchangeably as the "General Industrial Permit" or "Permit."

Waterkeeper is dedicated to the preservation and defense of the rivers, creeks and coastal waters of Los Angeles County. The organization works to achieve this goal through a synergy of education, outreach, organizing, litigation and regulatory programs that ensure the protection and enhancement of all waterways in Los Angeles County.

Where necessary to achieve its objectives, Waterkeeper directly initiates enforcement actions under the Act on behalf of itself and its approximately 3,000 members who live in and around the Los Angeles basin, and use and enjoy Compton Creek, the Los Angeles River, the Los Angeles River Estuary, the Los Angeles/Long Beach Harbor, San Pedro Bay, and the Pacific Ocean (hereinafter "Receiving Waters"). Waterkeeper members use the Receiving Waters and connected waterways, beaches and ocean waters to fish, surf, swim, sail, SCUBA dive and kayak. Unlawful discharges of pollutants from the Facility into the Receiving Waters impair the ability of Waterkeeper members to use and enjoy these waters.

As explained herein, AAA has and continues to discharge pollutants into the Receiving Waters in violation of the Clean Water Act and General Industrial Permit. Thus, the interest of Waterkeeper members have been, are being, and will continue to be adversely affected by the Facility's failure to comply with the Act and Permit.

II. Background

A. The Clean Water Act

In response to widespread disregard by industrial actors for the social and economic importance of our nation's waters, Congress enacted (and amended) the Act to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To achieve Congressional objectives, the Act is based on the concept that all polluted discharges into the nation's waters are unlawful. However, Congress included an exception for industrial polluters in Section 402, which provides that polluted discharges may be lawful if achieved in compliance with an NPDES permit. 33 U.S.C. §§ 1311(a), 1342(p), 40 C.F.R. § 122.26(c)(1). NPDES permits, including the General Industrial Permit, are the Act's principal enforcement tools. *Id.* Because NPDES permits are an exception to a general prohibition, compliance must be strictly enforced. Even after decades of regulatory and enforcement action, water pollution is still a major problem in the U.S.—39% of rivers, 45% of lakes and 51% of estuaries are too contaminated to serve essential social, economic and ecosystem functions.

In California, the United States Environmental Protection Agency ("U.S. EPA") has delegated authority to issue NPDES permits to the State Water Resources Control Board ("State Board"). 33 U.S.C. §§ 1342(b), (d). The Los Angeles Regional Water Quality Control Board ("Regional Board") is responsible for issuance and implementation of the Permit in Region 4, which covers the Facility.

Section 505(a) of the Act authorizes "any citizen" to file suit in federal court against facilities alleged to be in violation of the Act and/or related permits. 33 U.S.C. § 1365(a). Section 505(b) of the Act requires citizens to give notice to alleged violators at least sixty (60) days before initiating civil action under Section 505(a). 33 U.S.C. § 1365(b). Notice must be given to the alleged violator(s), the Administrator of the U.S. EPA, the Regional Administrator of U.S. EPA, the Executive Officer of the water pollution control agency in the State in which the alleged

violations occur (i.e. State Board), and, if the violator is a corporation, the registered agent of the corporation. 40 C.F.R. § 135.2(a)(1).

As detailed herein, AAA and the Facility are in ongoing violation of the Permit[3] and Act. The Facility's unlawful discharges of pollutants adversely affect Compton Creek, the Los Angeles River and downstream water bodies, and endanger the health and welfare of individuals and communities throughout the region. Waterkeeper will file suit in U.S. District Court following the expiration of the 60-day notice period on July 7, 2018. In that action, Waterkeeper will seek civil penalties, injunctive relief, fees and costs. AAA is subject to civil penalties for all violations of the Act occurring at the Facility since May 7, 2013. Each separate violation of the Act subjects the violator to a penalty of *up to* $52,414 per day per violation. *See* 33 U.S.C. §§ 1319(d) and 1365(a); 40 C.F.R. § 19.4.

B. The Facility, Industrial Activities and Pollutant Sources

California's Secretary of State indicates that AAA first registered in April of 1975. AAA's website indicates the Facility has been operating since 1958. The State Board's online database for compliance filings under the Act—the Storm Water Multiple Application and Report Tracking System ("SMARTS")—indicates that the Facility has been enrolled in the Permit since at least April 2, 1992. According to multiple filings submitted to the State of California, the Facility's primary Standard Industrial Classification ("SIC") Code is 3471 (Electroplating, Plating, Polishing, Anodizing, and Coloring). AAA primarily serves the aerospace and military/defense industries. According to information available to Waterkeeper, AAA is a privately held corporation that employs approximately 100 workers at the Facility, which generates approximate annual revenues of $15M for the company.

IMAGE 1

The Facility spans, at a minimum, 410 to 424 East Dixon Avenue. East Dixon Avenue is a dead-end block off Alameda Street. The Facility is surrounded almost entirely by other industrial facilities, with the notable exception of 5 single-family homes that are immediately to the Facility's east (see IMAGE 1). East Dixon is a public health and environmental justice nightmare reminiscent of third world capitals like Managua, Nicaragua. There are no fewer than 4 schools in the Facility's vicinity, including Dr. Ralph Bunche Middle School, which is located less than one block to the west.

[3] AAA is liable for violations of both the 1997 Permit and ongoing violations of the 2015 Permit. *See Illinois v Outboard Marine, Inc.* 680 F.2d 473, 480-81 (7th Cir. 1982) (granting relief for violations of an expired permit); *Sierra Club v Aluminum Co of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of expired permits); *Pub. Interest Research Group of N.J. v Carter Wallace, Inc.* 684 F. Supp. 115, 121-22 (D.N.J. 1988) (holding that limitations of an expired permit, when transferred to a newly issued permit, are viewed as currently in effect for enforcement purposes).

AAA's website indicates the Facility is 50,000 square feet. The Notice of Intent to Comply with the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity ("NOI") filed by Brian Ward on February 3, 2015 ("2015 NOI") indicates that the Facility is 43,500 square feet.

SCREEN CAPTURE 1

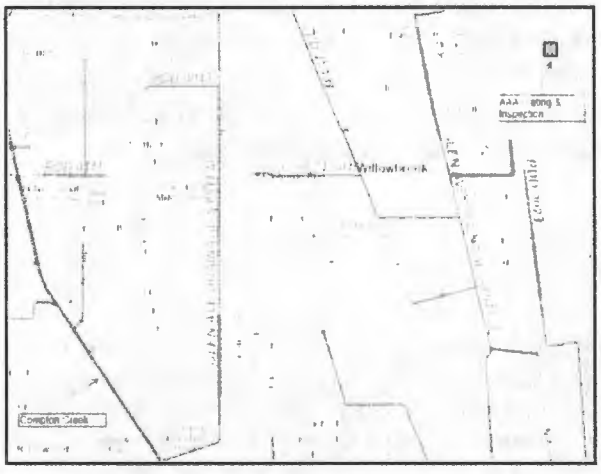
Anodize	**NDT**
Chromic Anodize	Flourescent & Dye Penetrant
Sulfuric Anodize	Rockwell Hardness Testing
Hard Anodize	Conductivity Testing
BAC 5019, 5555, 5632	Magnetic Particle Inspection
Chem Film	**Testing**
Alodine 600 & 1200s	Salt Spray Fog
Iridite 14-2	High Humidity
Boric-Sulfuric Anodize	Water Immersion
Phosphoric Anodize	Copper Sulfate
ROHS Chem Film	**Paint/Coatings**
Cleaning	Non-Chromate Primers
Abrasive Cleaning	Epoxy Primers (High Solids and Waterborne)
Aqueous Degrease	Etch Primers
Titanium Cleaning	Topcoats (Epoxy and Polyurethane)
Bright Dip of Copper	Solid Dry Film Lube
Glass Bead Blasting	Masking
Plastic Media Blasting	Adhesive Bonding Primers
Passivation (Cres + Ti)	Fuel Tank Coatings
Etching/Pickling (Al, Cres, and Ti)	SOL-GEL ("Silane") (AC-130) (AC-131)
Special Processes	Cetyl Alcohol
IVD Aluminum Coating	**Other**
Vacuum Cadmium Coating	Hydrogen Embrittlement Bake
Cadmium Plate	Stress Relieve up to 650F
Brush Cadmium	

According to the Storm Water Pollution Prevention Plan ("SWPPP") revised by AAA on February 6, 2015, "[p]rocesses conducted at the [F]acility include nickel strike, cadmium plating, chromic acid anodizing, sulfuric anodizing, hard anodizing, painting, non-destructive testing, degreasing, vacuum deposition and secondary operations." 2015 SWPPP. AAA's website lists additional services or processes offered at the Facility (see SCREEN CAPTURE 1). The Metal Finishing Association of Southern California ("MFASC") website includes the following list of Facility processes: "Anodizing, Blasting, Bright Dipping, Cadmium Plating, Cleaning, Conversion Coatings, Inspection, Painting, Passivating, Solid Film Lubricant, Titanium, Trade/Proprietary Processes, Vacuum Plating, [and] Zinc Plating."

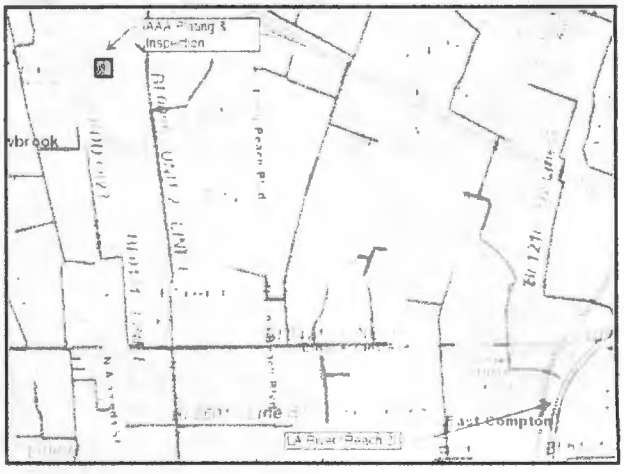
According to information available to Waterkeeper, each of the industrial processes undertaken by AAA at the Facility are pollutant sources that, pursuant to the Permit, must be disclosed and assessed for their potential contribution of pollutants in storm water discharges.

The Facility is among those industrial air emitters listed on inventories obtained from the South Coast Air Quality Management District ("Air District") for regulation under Proposed Amended Rule 1469 – Hexavalent Chromium Emissions from Chromium Electroplating and Chromic Acid Anodizing Operations ("PAR 1469"). PAR 1469 augments existing requirements to address fugitive emissions from hexavalent chrome plating and anodizing operations.

MAP 1



MAP 2



C. Discharge Points and Receiving Waters

The Facility is approximately 2.0 miles east of Compton Creek and approximately 3.0 miles west of the Los Angeles River ("LA River") (see MAP 1 and MAP 2, respectively, above). Water from the Facility discharges to a municipal storm water system operated by the County of Los Angeles, which discharges into either Compton Creek (and then into Reach 2 of the LA River), or into Reach 2 of the LA River. Both Compton Creek and Reach 2 of the LA River are impaired for, among other pollutants, copper and lead. From Reach 2, stormwater discharged from the Facility flows through Reach 1, into the LA River Estuary, the Los Angeles/Long Beach Harbor, and finally into the San Pedro Bay and Pacific Ocean. These water bodies are each waters of the United States, and as noted above, are referred to herein collectively as the "Receiving Waters."

According to AAA, "the [F]acility has two definable discharge points on the north boundary of the facility along Dixon St. The remaining discharge of storm water is generally to the north as sheet flow." 2015 SWPPP. Information available to Waterkeeper indicates that the Facility has *at least* 3 discharge points, including the sheet flow onto Dixon noted in numerous Annual Reports (*see e.g.* SCREEN CAPTURE 2 and 3), but may have *as many as* 10 discharge point, including at least 4 roof downspouts along the the residential driveway to the Facility's west.

SCREEN CAPTURE 2
2005-2006 Annual Report

Location	Discharge Observed		Describe Observation and Source of Pollutant
Discharge Point 1	Floating Materials	Yes (No)	Water Dark & Cloudy
	Suspended Materials	Yes (No)	
	Oil or Grease	Yes (No)	
	Discoloration	(Yes) - No	
	Turbidity	(Yes) - No	
	Odor	Yes (No)	
	Other	Yes (No)	
Location	**Discharge Observed**		**Describe Observation and Source of Pollutant**
Discharge Point 2	Floating Materials	Yes (No)	Water Milky-white
	Suspended Materials	Yes (No)	
	Oil or Grease	Yes (No)	
	Discoloration	Yes (No)	
	Turbidity	(Yes) - No	
	Odor	Yes (No)	
	Other	Yes (No)	
Location	**Discharge Observed**		**Describe Observation and Source of Pollutant**
Sheet Flow Along Dixon	Floating Materials	Yes (No)	Sheet flow w/ no sheen
	Suspended Materials	Yes (No)	
	Oil or Grease	Yes (No)	
	Discoloration	Yes (No)	
	Turbidity	Yes (No)	
	Odor	Yes (No)	
	Other	Yes (No)	

With every significant rainfall event millions of gallons of polluted storm water originating at industrial facilities pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. In Los Angeles County, these discharges contribute not only to the impairment of the waters receiving polluted discharges, but all downstream waters including the Pacific Ocean. Contaminated discharges threaten the health of the aquatic and associated terrestrial ecosystems in the receiving waters, and also the welfare of communities that live near and/or use these resources.

SCREEN CAPTURE 3
2009-2010 Annual Report

2. Did you collect storm water samples from the first storm of the wet season that occurred during scheduled facility operating hours? (Section B.5 of the General Permit)

☐ YES ☒ NO,

3. How many storm water discharge locations are at your facility? 3

Polluted discharges from industrial facilities like AAA are known to contain, *inter alia*, substances affecting pH; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; total suspended solids; benzene; gasoline and diesel fuels; nitrate

and nitrite nitrogen; substances affecting specific conductance; oil and grease; and trash. Discharges of polluted storm water and non-storm water to local water ways/bodies pose carcinogenic, developmental and reproductive toxicity threats to the public, adversely affect the aquatic environment, and impair the tourist economy on which the Los Angeles Region depends.

The Regional Board issued the "Water Quality Control Plan—Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura County" ("Basin Plan").[4] The Basin Plan identifies Beneficial Uses of the Receiving Water, which include: Water Contact Recreation ("REC-1"), Non-Contact Water Recreation ("REC-2"), Rare, Threatened, or Endangered Species ("RARE"), Wildlife Habitat ("WILD"), Warm Freshwater Habitat ("WARM"), Ground Water Recharge ("GWR"), Municipal and Domestic Supply ("MUN"), Industrial Service Supply ("IND"), and Industrial Process Supply ("PROC"). *See* Basin Plan, Table 2-1.

The Receiving Waters are ecologically sensitive areas. In 2010, then EPA Administrator Lisa Jackson observed that the LA River "deserve[d] the same protection as a pristine river anywhere in our country."[5] Polluted discharges from the Facility cause and/or contribute to the degradation of these already impaired surface waters, beaches, and aquatic dependent wildlife. Although pollution and habitat destruction have drastically altered the natural ecosystem, the Receiving Waters are still essential habitat for dozens of fish and bird species, as well as macro invertebrate and invertebrate species. The public—including tourists, residents and Waterkeeper members—make extensive use of the Receiving Waters for water contact sports, fishing, non-contact recreational, and aesthetic opportunities, such as wildlife observation. Polluted discharges from the Facility expose many people to contaminants that threaten public health and welfare, and impair natural ecosystems that depend on the Receiving Waters. Polluted storm water and non-storm discharges harm the special aesthetic, economic and recreational significance the Receiving Waters have for the public, including Waterkeeper members.

III. Storm Water Permitting and Enforcement

As described above, the Act prohibits discharging pollutants to waters of the United States from a point source except as permitted under an NPDES permit, such as California's General Industrial Permit. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). The 1997 Permit and the 2015 Permit both require that dischargers meet all applicable provisions of the Act's Sections 301 and 402.

A. Translating Statutory Mandates into the General Permit[6]

The Clean Water Act consists of two major parts, one being the provisions that authorize federal financial assistance for municipal sewage treatment plant construction. The other is the regulatory requirement that industrial and municipal dischargers must participate in the NPDES permit program, which includes California's General Industrial Permit for stormwater

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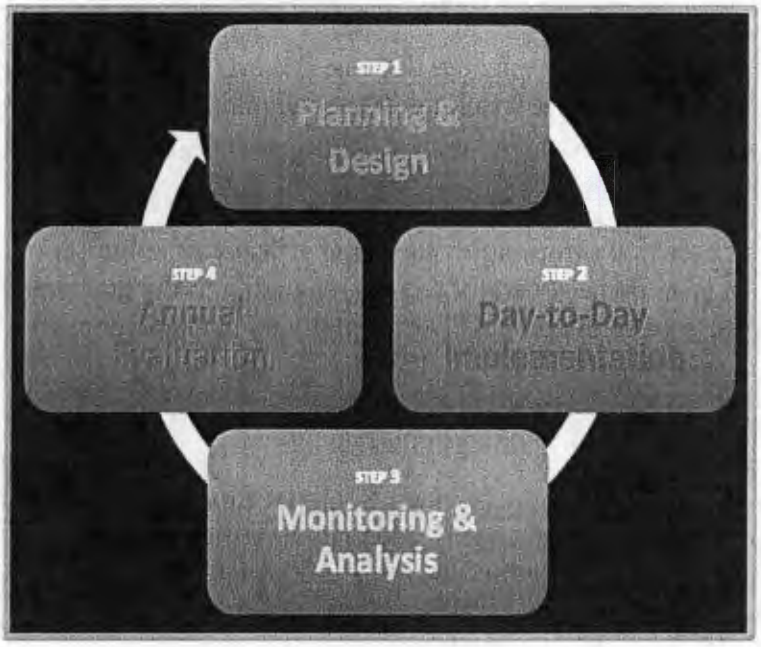
[4] *See* http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/ basin_plan_documentation.html.
[5] *A River Really Runs Through It*, Wall Street Journal, July 31, 2010 available at: http://www.wsj.com/articles/SB10001424052748704229004575371250531411806
[6] The description of standards applicable under the Act and Permit contained in this section III.A and through Section III.F are not intended as a comprehensive recitation of every potential requirement, nor a complete description of each standard addressed. Rather, this section of the Notice Letter is intended to summarize the standards most relevant to facilities like those operated by AAA.

discharges. The Act has been termed a "technology-forcing" statute because of its emphasis on achieving higher and higher levels of pollution abatement over time. Early on, emphasis was placed on controlling discharges of conventional pollutants (e.g., suspended solids or bacteria), while control of toxic pollutant discharges has been the focus more recently.

The Act prohibits any discharges of storm water associated with industrial activities (and authorized non-storm water discharges) that have not been subjected to Best Available Technology Economically Achievable ("BAT") for toxic[7] (or non-conventional) pollutants, and Best Conventional Pollution Control Technology ("BCT") for conventional pollutants[8] (33 U.S.C. §§ 1311(b)(2)(A), (B)). However, regulators recognize the strain that strict application of the standards would impose on industry, as well as the practical challenge of defining and enforcing the standards. Thus, rather than requiring the application of a specific BAT or BCT technique to each individual discharge of storm water, the Permits implements a far more flexible compliance regime under which compliance with its terms and conditions serve as a proxy for compliance with the Act. 33 U.S.C. §§ 1311(b)(2)(A), 1311(b)(2)(E).

DIAGRAM 1
Compliance Process Includes Four
Independent, Mutually Reinforcing Actions



Compliance with the terms and conditions of the Permit, which requires that discharges meet all applicable provisions of Sections 301 and 402, constitutes compliance with the Act for purposes of storm water discharges. Conversely, failures to comply with the Permit's terms and conditions constitute violations of the Act. *See* 1997 Permit, Section C(1); *see also* 2015 Permit, Section XXI(A). The Act's BAT/BCT mandate is translated into the Permit by the requirement that owners and operators design and implement facility-specific Best Management Practices ("BMPs")—structural (e.g. installing berms to direct rainwater away from pollutants or into treatment systems) or operational (e.g. sweeping/vacuuming industrial areas) pollution control strategies tailored to each facility and its pollutants/pollutant sources.

Compliance with the Permit requires that permittees consistently engage in a multi-prong strategy with four *independent, but mutual-reinforcing* actions (see DIAGRAM 1 above). These four actions include:

[7] Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead and zinc, among others.
[8] Conventional pollutants include Total Suspended Solids, Oil and Grease, pH, biochemical oxygen demand and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or non-conventional.

1. Executive Planning and BMP Design—assessing a facility's potential pollutant sources, reviewing pollutant control options, designing BMPs specific to each pollutant/pollutant source, and preparing a Storm Water Pollution Prevention Plan ("SWPPP");
2. On-The-Ground Implementation of BMPs—training staff to implement the SWPPP effectively on a day-to-day basis; and then implementing each of the BMPs delineated in the SWPPP, which may include constructing structural BMPs, ensuring that supplies (e.g. filter socks) are available, monitoring for impending rain events, communicating with staff responsible for BMP inspection/maintenance, etc.;
3. Monitoring and Analysis—complete and record visual observations, collect stormwater samples, send samples to the lab for analysis, submit reports to the State Board via SMARTS; and
4. Annual Evaluation and Corrective Action—complete a comprehensive review of records and data with staff, assess strengths/weaknesses in plan design or implementation, and then amend the SWPPP to improve the effectiveness of existing BMPs and/or design additional BMPs to reduce/prevent polluted discharges.

Each of the four steps is a necessary condition to compliance with the Permit. Without executive planning and design, a facility's staff is highly unlikely to implement and maintain BMPs that are sufficiently effective to serve as stand-ins for BAT/BCT. Likewise, without consistent and reliable on-the-ground implementation, no amount of expert planning will prevent and reduce pollutants in stormwater discharges. And failures to monitor industrial activities or to collect data leaves an owner/operator without essential information about the efficacy of pollution control measures, which in turn prevents an owner/operator from re-engaging in the planning and design of effective corrective actions. Because the process is essentially a feedback loop, all actions must be *consistently and sincerely* pursued.

B. The Storm Water Pollution Prevention Plan Requirement

After enrolling in the Permit (i.e. sending an NOI to the relevant Regional Board), the first step toward compliance is the preparation of a SWPPP. A legally adequate SWPPP must comply with every portion of the Permit's mandate, as detailed in Section A of the 1997 Permit and Section X of the 2015 Permit.[9] As discussed above, the SWPPP is the master plan for how a facility will comply with the Permit and Act.

The SWPPP is the heart of the IGP, and its core of each SWPPP under a "general permit" is the assessment of *facility-specific* industrial processes and sources of pollutants. The SWPPP must include a comprehensive description and assessment of potential pollutant sources, and a list of pollutants likely to be present in industrial stormwater, 2015 Permit, Sections X(G)(1)-(2).

[9] Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. *See* 2015 Permit, § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit, §§ X(G)(2), (4), (5). Section X(E) of the 2015 Permit requires that the SWPPP map depict, *inter alia*, all storm water discharge locations.

Second, the SWPPP must include a full and complete description of both minimum and advanced BMPs to be implemented at the facility, as well an assessment of each BMP's effectiveness. 2015 Permit, Section X(H)(1)-(2). According to the State Board, the 2015 Permit "requires Dischargers to implement a set of minimum BMPs[, which] in combination with any advanced BMPs necessary to reduce or prevent pollutants in industrial storm water discharges, serve as the basis for compliance with this General Permit's technology-based effluent limitations and water quality based receiving water limitations." *See* Summary of Significant Changes for the General Permit for Storm Water Associated with Industrial Activity Order 2014-0057-DWQ at p. 1. Third, the SWPPP must include a site map, which is essential not only for planning and design of BMPs, but also for translating plans into effective on-the-ground implementation. 2015 Permit, Section X(E).

Other provisions include, *inter alia*, a requirement that each SWPPP: i) identify individuals on the Pollution Prevention Team who are responsible for on-the-ground implementation; ii) detail the facility's Monitoring and Reporting Plan ("MRP") to guide staff about how, when and what to monitor for polluted discharges and collect samples during qualified storm events; and iii) describe conditions that warrant SWPPP amendments and/or BMP modification.

Section X(G) defines the minimum standards for disclosing and assessing potential pollutant sources specific to each facility. Section X(G)(1)(a) requires that every SWPPP "describe each industrial process including: manufacturing, cleaning, maintenance, recycling, disposal and any other activities related to the process." Permittees are not required to describe activities unrelated to water quality, and may use general narratives as necessary to protect trade secrets and intellectual property. However, owners and operators must faithfully comply with the fundamental policy goal—to formulate pollution control strategies based on an accurate picture of a facility's potential impacts to water quality and public health.

Section X(G)(2), which requires the disclosure and assessment of potential pollutant sources, reads:

> "*2. Assessment of Potential Pollutant Sources*
>
> *a. The Discharger shall ensure that the SWPPP includes a narrative assessment of all areas of industrial activity with potential industrial pollutant sources. At a minimum, the assessment shall include:*
>
> *i. The areas of the facility with likely sources of pollutants in industrial storm water discharges and authorized NSWDs;*
>
> *ii. The pollutants likely to be present in industrial storm water discharges and authorized NSWDs;*
>
> *iii. The approximate quantity, physical characteristics (e.g. liquid, powder, solid, etc.), and locations of each industrial material handled, produced, stored, recycled, or disposed;*
>
> *iv. The degree to which the pollutants associated with those materials may be exposed to, or mobilized by contact with, storm water;*
>
> *v. The direct and indirect pathways by which pollutants may be exposed to storm water or authorized NSWDs..."*

Taken as a whole, romanettes (i) through (v) establish a clear and broad legal mandate. SWPPPs must include a comprehensive narrative assessment of pollutants with the potential to affect

water quality. The SWPPP is considered the heart of the Permit because it is the essential link between executive planning and design efforts and on-the-ground implementation by staff. The SWPPP must identify (i.e. disclose) and assess facility-specific sources of pollutants; and then describe customized BMP pollution control measures.

C. The Permit's Discharge Standards

The Permit contains three discharge standards: 1) Section III's Discharge Prohibitions; 2) Section V's Effluent Limitations; and 3) Section VI's Receiving Water Standards. Each of the applicable discharge standards detail individual, but potentially overlapping, requirements for industrial stormwater discharges. *See* 1997 Permit, Section A(2); 2015 Permit, Section III(C).

1. *Discharge Prohibitions*

The Permit contains an outright prohibition on "non-storm water discharges" ("NSWD") directly or indirectly to waters of the United States. 1997 Permit, Section A(1); 2015 Permit, Section III(B). The Discharge Prohibitions also proscribe storm water discharges that cause or threaten to cause pollution, contamination, or nuisance as defined in section 13050 of the State Water Code. 1997 Permit, Section A(2); 2015 Permit, Section III(C).

2. *Effluent Limitations*

The Permit's Effluent Limitations require, *inter alia*, the following: i) dischargers shall implement BMPs that comply with the BAT/BCT requirements to reduce or prevent discharges of pollutants in their storm water discharges in a manner that reflect best industry practice considering technological availability and economic practicability and achievability; and ii) dischargers located with a watershed for which a Total Daily Maximum Load ("TMDL") has been approved by U.S. EPA shall comply with any applicable TMDL-specific permit requirements that have been incorporated into the Permit. *See* 1997 Permit, Section B(3), 2015 Permit, Section V(A); *see also* 1997 Permit, Section A(8); 2015 Permit, Section X(H).

3. *Receiving Water Limitation*

The Permit's Receiving Water Limitations prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS"). 1997 Permit, Section C(2); 2015 Permit, Section VI(A). Discharges that contain pollutants in excess of or that are otherwise inconsistent with an applicable WQS violate these Receiving Water Limitations. Applicable WQS's are delineated in, *inter alia*, the Basin Plan[10] or California Toxics Rule.[11] *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999) (holding that industrial storm water discharges must strictly comply with water quality standards including those criteria listed in the applicable basin plan). The Permit's Receiving Water Limitations also prohibit storm water discharges (and authorized non-storm water discharges) to surface waters that adversely impact human health or the environment. 1997 Permit, Section C(1); 2015 Permit, Section VI(B). Thus, all discharges containing

[10] The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards in the Basin Plan consist of water quality criteria expressed as pollutant concentration levels determined by State or federal agencies to be protective of designated Beneficial Uses.

[11] *Criteria for Priority Toxic Pollutants for the State of California.* 65 Fed. Reg. 31712 (May 18, 2000); 40 C.F.R. § 131.38.

pollutant concentrations exceeding WQSs or with levels that adversely impact the environment, and/or human health constitute violations of the Permit.

D. The Permit's Monitoring Requirements

The principal monitoring requirements imposed by the 1997 Permit and 2015 Permit are substantially identical. *Compare* 1997 Permit, Sections B(3)-(16) *to* 2015 Permit, Sections X(I) and XI(A)-(D). First, the Permit requires that each SWPPP contain a Monitoring Implementation Plan ("MIP") that identifies the team members and their responsibilities for monitoring/sampling, justifications for variances to the Permit's standard provisions, as well as the a plan and documents necessary to collect and submit stormwater samples. *See* 2015 Permit, Section I. A legally adequate MIP ensures that BMPs achieve BAT/BCT, and is evaluated at least annually.

The 1997 Permit required facilities conduct quarterly visual observations of all drainage areas for the presence of authorized and unauthorized non-storm water discharges. 1997 Permit, Section B(3). The 2015 Permit increased the frequency of visual observations to monthly, and requires that observations be completed at the same time samples are collected. 2015 Permit, Section XI(A). The Permit requires that facilities complete visual observations of storm water discharges from one event per month during the wet season. 1997 Permit, Section B(4); 2015 Permit, Section XI(A)(2). Dischargers must document observations, and any responses taken to address problems observed, including revisions made to the SWPPP. 1997 Permit, Sections B(3)-(4); 2015 Permit, Sections XI(A)(2)-(3). The Permit requires facilities to collect samples of storm water discharges from each of the discharge locations from at least two storm events under the 1997 Permit, and at least 4 storm events under the 2015 Permit[12]—taking care that water collected is representative of the discharge from each discharge point. 1997 Permit, Sections B(5), (7); 2015 Permit, Sections XI(B)(1)-(5).

The Permit's Section X.G.2 (quoted and discussed above) is operationalized through Section XI.B.6, which supplies the mandate with respect to monitoring and analyzing stormwater discharges. Section XI.B.6 reads:

> 6. *The Discharger shall analyze all collected samples for the following parameters:*
>
> a. *Total suspended solids (TSS) and oil and grease (O&G);*
>
> b. *pH (see section XI.C.2);*
>
> c. *Additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment (Section X.G.2). These additional parameters may be modified (added or removed) in accordance with any updated SWPPP pollutant source assessment;*
>
> d. *Additional applicable parameters listed in Table 1 below. These parameters are dependent on the facility Standard Industrial Classification (SIC) code(s);*

[12] The 2015 Permit requires facilities to collect samples from each discharge location from two storm events within the first half of each reporting year (July 1-Dec. 31) and two storm events from the second half of each reporting year (Jan. 1-Jun 30).

e. *Additional applicable parameters related to receiving waters with 303(d) listed impairments[13] or approved TMDLs based on the assessment in Section X.G.2.a.ix.*

f. *Additional parameters required by the Regional Board[...];*

g. *For dischargers subject to Subchapter N, additional parameters specifically required by Subchapter N[...].*

Thus, absent intervention by a regional board pursuant to sub-paragraph (f), Section XI.B.6 details four (4) categories of parameters dischargers must analyze each sample for: 1) basic parameters (TSS, O&G and pH) applicable to every permittee [detailed in sub-paragraphs (a) and (b)]; 2) facility-specific parameters based on the facility's SIC code, which are included at Table 1 of the Permit [detailed in sub-paragraph (d)]; 3) facility-specific parameters found in extrinsic regulatory sources [detailed in sub-paragraphs (e) and (g)]; and 4) facility-specific parameters deriving from the pollutant source assessment each discharger must complete to comply with Section X.G.2 [detailed in sub-paragraph (c)].

Section XI.B.6.c is unique in this section because it is explicitly linked to other activities described in the SWPPP, and depends on prior compliance activities by owners/operators. Section XI.B.6.c does not explicitly list additional parameters or cite to another source where additional parameters are listed. Rather, it relies entirely on an honest effort by each permittee to analyze all storm water samples for 'facility-specific' parameters that they themselves identify and assess as part of developing the facility's SWPPP. Sub-paragraph (c) requires dischargers to analyze each sample for all pollutants (and their indicators) identified in the source assessment required by Section X.G.2. Therefore, if an owner/operator identifies copper and iron as "facility-specific" pollutants as part of its pollutant source assessment, then all storm water samples must be analyzed for copper and iron.

The primary objective of the Permit's monitoring requirements is to detect and measure concentrations of pollutants in a facility's storm water discharges to ensure BMPs are effective in maintaining compliance with the Permit's Effluent Limitations, Receiving Water Limitations and Discharge Prohibitions. *See* 1997 Permit, Section B(2); *see also* 2015 Permit, Section X(I). A facility's monitoring plan must be designed and implemented to test the effectiveness of BMPs—both as designed and as implemented. Visual observation records, lab analyses/reports and other data resulting from a facility's monitoring plan provide the foundation for assessing compliance with the Permit's three discharge standards. Visual observation records may uncover a pattern that can be fixed by more regular housekeeping. However, the emphasis of monitoring must be on collecting stormwater samples and analyzing those samples for pollutants associated with a facility's industrial activity; and then comparing those results to the various numeric and narrative limits established for the purpose of assessing BMP effectiveness.

E. The Permit's Reporting Requirements

Permittees must comply with all reporting requirements in Sections XV and XVI of the 2015

[13] "Impaired waters" are water bodies that do not currently meet their applicable designated uses and water quality standards. Stormwater discharges to impaired waters may trigger additional control measures and monitoring requirements.

Permit.[14] The fundamental requirements are to collect samples of storm water, submit those samples to a certified lab for analysis, and then submit the data via SMARTS within thirty (30) days of obtaining results. 2015 Permit, § XI(B)(11).

As described above (see DIAGRAM 1), each of the various elements required by the Permit are important in that they ultimately operate as part of a feedback loop in which the efficacy of any one part is dependent on the other parts having been completed. Nevertheless, the Permit's inflection point is the requirement that each owner/operator complete an Annual Comprehensive Facility Compliance Evaluation ("Annual Compliance Evaluation") and then re-engage in the planning and design process to address deficiencies that are detected when reviewing the prior year's compliance efforts. At a minimum, the Annual Compliance Evaluation shall consist of: i) a review of sampling data, visual observation and inspection records conducted during the year; ii) an inspection of all areas of industrial activity and associated potential pollutant sources for evidence of, or the potential for, pollutants entering the storm water conveyance system; iii) an inspection of all drainage areas previously identified as having no exposure to industrial activities; iv) an inspection of equipment needed to implement BMPs; v) an inspection of any BMPs; vi) a review and effectiveness assessment of all BMPs to determine if the BMPs are properly designed, implemented, and are effective in reducing and preventing pollutants in storm water discharges; and vii) an assessment of any other factors needed to comply with the requirements in Section XVI.B.

The failure to upgrade, revise and/or add BMPs, and amend the SWPPP, in response to deficiencies that were (or should have been) discovered during an Annual Compliance Evaluation is an independent and serious violation.

F. Numeric Action Levels and Exceedance Response Actions

In response to a general contempt for the *voluntary* approach embodied in the 1997 Permit, the State Board formalized an iterative process in the 2015 Permit with the establishment of an Exceedance Response Action ("ERA") requirement—a compulsory BMP review and revision process. *See* 2015 Permit Factsheet at 55-60. The ERA requirement codifies the feedback loop referred to above by mandating that facility operators/owners engage in corrective planning and design when data demonstrates pollutant concentrations exceed either annual or instantaneous Numeric Action Levels ("NALs"). 2015 Permit, Section XII. NALs are similar to benchmarks, but are generally more lenient and represent averaged concentrations from multiple discharge points over an entire year. NALs are intended as triggers for the ERA program's reporting requirement. And while exceedances of a NAL demonstrate that a facility has failed and continues to fail to implement pollution prevention measures required by the Permit, the State Board did not intend for NALs to represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[15]

The NALs are not a means to determining compliance with the effluent or receiving water

[14] The 1997 Permit's monitoring and reporting requirements, found in Section B, sought to achieve the same objectives and are substantially identical.

[15] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

limitations. The Fact Sheet that accompanies the Permit also makes clear, by its structure and express language, that NALs are not intended to determine compliance with the statute. Fact Sheet, Section II p. 15-21. The NALs operate to signal to owner/operators, the public and state agencies when a facility's BMPs are clearly deficient, and therefore immediate remedial actions (i.e. ERA procedures) must begin. *See* 2015 Permit, § XII.A

The Permit requires permittees to develop and implement ERAs whenever a NAL exceedance occurs during a reporting year. The first time a NAL exceedance occurs for any one parameter, a permittee's status is changed from Baseline to Level 1. At Level 1 status, a permittee is required to evaluate and revise, as necessary, its BMPs with the assistance of a Qualified Industrial Stormwater Practitioner ("QISP") and submit a report prepared by the QISP. Specifically, the permittee will enter Level 1 status on July 1 and must conduct an evaluation by October 1 and submit the report by January 1. *See* 2015 Permit, § XII.C.

The second time a NAL exceedance occurs for the same parameter in a subsequent reporting year, a permittee's status is changed from Level 1 to Level 2. At Level 2 status, a permittee is required to submit a Level 2 ERA Technical Report. Specifically, the permittee must prepare a Level 2 ERA Action Plan by January 1. On the next January first, the permittee in Level 2 status must prepare and submit a Level 2 ERA Technical Report describing all BMPs implemented and assessing their effectiveness. *See* 2015 Permit, § XII.D.

G. Community Enforcement

In designing the Act, Congress acknowledged "the Government simply is not equipped to take court action against the numerous violations [...] likely to occur [under the Act]." 116 Cong. Rec. 33,104 (1970) (statement of Sen. Hart).[16] In anticipating this challenge, Congress crafted Section 505 to encourage communities to enforce the Act as private attorneys general. Community enforcement actions, therefore, fill a critical social role by enforcing the Act's mandate and are "welcomed participants in the vindication of environmental interests." *Friends of the Earth v. Carey*, 535 F.2d 165, 172 (2nd Cir. 1976). President Trump's EPA has stated that "[c]itizen enforcement actions are an integral component of the Acts' overall enforcement schemes. The United States values the contribution that responsibly-pursued citizen suits make towards protecting our nation's air and waters."

Community enforcement actions also fill an essential economic role. Water pollution results in inefficient economic outcomes caused by market failures that are frequently associated with common pool resources like surface waters and oceans. Enforcement actions under Section 505 help correct these market failures by forcing industrial facilities to internalize the social welfare impacts (i.e. costs) of water pollution that would otherwise be borne by society. Society at large pays handsomely when business owners fail to operate efficiently. The most common costs are associated with human illness (health care costs, lost productivity, etc.), habitat loss, ecosystem service disruption (e.g. clean irrigation water for agriculture), wildlife disturbances, and detrimental impacts to tourism.

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[16] *See also* 116 Cong. Rec. 33,104 (1970) (statement of Sen. Muskie) "I think it is too much to presume that, however well staffed or well intentioned these enforcement agencies are, they will be able to monitor the potential violations of all the requirements contained in the implementation plans that will be filed under this act, all the other requirements of the act, and the responses of the enforcement officers to their duties."

IV. Violations of the Clean Water Act and the Storm Water Permit

In California, any person who discharges storm water associated with certain classified industrial activity must comply with the terms of the Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1). The 2015 Permit superseded the 1997 Permit, except for enforcement purposes, and its terms are as stringent, or more stringent, than the terms of the 1997 Permit. *See* 2015 Permit, Findings, ¶ 6. Accordingly, AAA is liable for violations of the 1997 Permit and ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies. *See Illinois v. Outboard Marine, Inc.*, 680 F.2d 473, 480-81 (7th Cir. 1982) (relief granted for violations of an expired permit); *Sierra Club v. Aluminum Co. of Am.*, 585 F. Supp. 842, 853-54 (N.D.N.Y. 1984) (holding that the Clean Water Act's legislative intent and public policy favor allowing penalties for violations of an expired permit); *Pub. Interest Research Group of N.J. v. Carter-Wallace, Inc.*, 684 F. Supp. 115, 121-22 (D.N.J. 1988) ("[l]imitations of an expired permit, when those limitations have been transferred unchanged to the newly issued permit, may be viewed as currently in effect"); *see also CSPA v. River City Waste Recyclers*, 2016 U.S. Dist. LEXIS 120186, at *13-18 (E.D.Cal. Sep. 2, 2016).

In the years since enrolling in the Permit, AAA has failed to carry out the public health and environmental protection mandates embodied in the Permit. As discussed in further detail below, the Facility is in ongoing violation of the Permit. Specifically, the Facility has: A) discharged polluted storm water in violation of the Permit's requirement to develop and implement BMPs consistent with BAT/BCT; B) discharged polluted storm water in violation of the Permit's Receiving Water Limitations; C) failed to complete legally adequate planning and design procedures; D) failed to develop, implement and/or revise an adequate monitoring and reporting plan; and E) failed to adequately or honestly complete remedial actions. AAA is subject to *daily* civil penalties for *each* violation of the Permit and Act detailed below since May 7, 2013.

A. Discharges of Unauthorized Non-Storm Water from the Facility in Violation of the Storm Water Permit Discharge Prohibition.

Except as authorized by Special Conditions D(1) of the 1997 Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. *See* 2015 Permit, Section III(B). Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* 1997 Permit, Section A(1); *see also* 2015 Permit, Section III(B).

Information available to Waterkeeper indicates that vehicle and equipment washing and cleaning occurs at the Facility. Information available to Waterkeeper also indicates that overflow and blow-down (a.k.a. bleed) water from the cooling towers collects near the cooling towers, which may not be properly plumbed to the wastewater treatment system. Information available to Waterkeeper also indicates that the storm water collection sump has been used to collect and discharge non-storm water. Information available to Waterkeeper indicates that wash water, cooling tower overflow/blow-down as well as non-storm water from the sump discharge from the Facility as unauthorized non-storm water discharges due to inadequate BMP development and/or implementation necessary to prevent these discharges.

Waterkeeper puts AAA on notice that the Permit's Discharge Prohibition is violated each time

non-storm water is discharged from the Facility. *See* 1997 Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Section III(B). These discharge violations are ongoing and will continue until AAA develops and implements BMPs that prevent prohibited non-storm water discharges or obtains separate NPDES permit coverage. Each time AAA discharges prohibited non-storm water in violation of the Permit is a separate and distinct violation of the Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). AAA has been in violation since May 7, 2013, and Waterkeeper will update the dates of violations when additional information and data become available. AAA is subject to civil penalties for all violations of the Clean Water Act occurring since May 7, 2013.

B. Discharges of Polluted Storm Water in Violation of the Storm Water Permit's Requirement to Develop and Implement BMPs That Achieve BAT/BCT.

Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT or BCT. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Section V(A).

As discussed herein, information available to Waterkeeper indicates that BMPs that achieve BAT/BCT have not been developed and/or implemented at the Facility. The 2008 and 2015 SWPPPs, the 2017 Level 1 ERA Evaluation and Report, observations by Waterkeeper, and analytical results of storm water sampling at the Facility containing pollutants in excess of EPA Benchmark Levels demonstrate that AAA has failed and continues to fail to develop and/or implement BMPs that achieve BAT/BCT. EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Section B(3) of the 1997 Permit and Section V(A) of the 2015 Permit.[17] For example, samples of storm water collected from the Facility document that storm water containing levels of aluminum, iron, chromium, cadmium, copper and nitrite plus nitrate above EPA's Benchmark Levels is discharged from the Facility. *See* TABLE 1, which sets out the results of sampling of storm water discharges. Information available to Waterkeeper, including the significant exceedances of EPA Benchmarks demonstrates that AAA has failed and continues to fail to develop and/or implement BMPs at the Facility to achieve compliance with the BAT/BCT standards.

Waterkeeper puts AAA on notice that the Permit's Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Appendix 1 (setting forth dates of significant rain events measured at a nearby rain gauge).[18] These discharge violations are ongoing and will continue every time AAA discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. AAA has been in violation of the Effluent Limitations since at least May 7, 2013 and Waterkeeper will update the dates of violations when additional information and data become available. Each time AAA discharges polluted storm water in violation of Section B(3) of the 1997 Permit and Section

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[17] *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

[18] A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility.

V(A) of the 2015 Permit is a separate and distinct violation of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

TABLE 1

Summary of Metal Concentrations (mg/L) in Facility's Stormwater Discharges 1998 to 2018

AR	Date	Al	N+N	Zn	Fe	Cr	Cd	Cu	Ti	DP
1998-99	3/25/99	1.45	2.7	not tested	2.69	0.15	not tested	not tested	not tested	1
		1.33	2.59	not tested	2.16	0.14	not tested	not tested	not tested	2
1999-00	2/10/00	0.78	2.56	not tested	0.93	0.04	not tested	not tested	not tested	1
		1.11	2.32	not tested	1.35	0.05	not tested	not tested	not tested	2
2000-01	No annual report or analytical data publicly available									
2001-02	11/29/01	2.1	88	1.0	2.7	0.24	not tested	not tested	not tested	1
		0.59	1.6	0.5	1.3	0.06	not tested	not tested	not tested	2
	12/14/01	1.9	0.81	2.0	0.87	0.45	not tested	not tested	not tested	1
		1.3	1.2	0.82	1.2	0.09	not tested	not tested	not tested	2
2002-03	12/16/02	0.41	1.1	0.37	0.50	0.23	not tested	not tested	not tested	1
		0.35	1.1	0.36	0.44	0.21	not tested	not tested	not tested	2
2003-04	11/12/03	8.9	2.8	3.0	12	1.4	not tested	not tested	not tested	
		3.7	2.7	1.6	4.6	0.62	not tested	not tested	not tested	
2004-05	No samples were collected or analyzed for the 2004-05 Permit term									
2005-06	Annual Report indicates 1 sample collected, but lab analysis not available									
2006-07	Annual Report indicates sampling data submitted to Metal Finishing Association									
2007-08	No samples were collected or analyzed for the 2007-08 Permit Term									
2008-09	No samples were collected or analyzed for the 2008-09 Permit Term									
2009-10	Annual Report indicates 1 sample collected, but lab analysis not available									
2010-11	No samples were collected or analyzed for the 2010-11 Permit Term									
2011-12	No samples were collected or analyzed for the 2011-12 Permit Term									
2012-13	2/8/13	5.75	8.87	2.82	6.41	1.43	not tested	not tested	not tested	1
	2/8/13	3.68	1.45	1.03	5.83	0.14	not tested	not tested	not tested	2
2013-14	Annual Report indicates that no samples were collected for the 2013-14 Permit term									
2014-15	12/2/14	2.04	1.3	2	3.23	<0.02	not tested	not tested	not tested	1
	12/2/14	2.02	3.3	0.92	2.72	0.11	not tested	not tested	not tested	2
2015-16	1/6/16	0.51	0.39	1.3	1.21	0.13	not tested	not tested	not tested	1
		1.8	0.21	0.55	3.14	0.1	not tested	not tested	not tested	2
2016-17	No sampling between start of 2016 wet season and February 2017.									
	2/3/17	0.88	1.54	1.2	0.67	0.1	0.037	0.03	not tested	1
	2/3/17	0.15	1.05	0.21	0.24	0.05	0.023	0.02	not tested	2
	2/17/17	1.8	2.71	1.2	not tested	not tested	not tested	not tested	not tested	1
	2/17/17	0.062	0.31	0.15	not tested	not tested	not tested	not tested	not tested	2
2017-18	1/8/18	4.1	8.18	4.6	1.30	0.17	0.096	0.071	not tested	1
		3.7	3.62	4.2	1.17	0.14	0.096	0.071	not tested	2
	3/2/18	2.7	2.19	1.6	2.96	0.25	0.093	0.075	not tested	1
		0.44	0.88	0.26	0.39	0.09	0.02	0.23	not tested	2

Further, Waterkeeper puts AAA on notice that the Effluent Limitations are separate, independent requirements with which the Facility must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitations. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[19]

C. Discharges of Polluted Storm Water from the Facility in Violation of Permit's Receiving Water Limitations.

Information available to Waterkeeper indicates that the Facility's storm water discharges contain concentrations of pollutants that can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the Permit's Receiving Water Limitation. *See* 1997 Permit, Section C(1); 2015 Permit, Section VI(B).

Information available to Waterkeeper also indicates that storm water discharges from the Facility cause or contribute to violations of WQSs. *See* TABLE 1. Discharges of storm water containing levels of pollutants that exceed WQSs are violations of the Receiving Water Limitations. *See* 1997 Permit, Section C(2); 2015 Permit, Section VI(A).

Waterkeeper puts AAA on notice that Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See* Appendix 1. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Section C(2) of the 1997 Permit, Section VI(A) of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(1) of the 1997 Permit, Receiving Water Limitation VI(B) of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). AAA has been in violation of the Receiving Water Limitations since May 7, 2013 and Waterkeeper will update the dates of violation when additional information and data becomes available.

Further, Waterkeeper puts AAA on notice that 2015 Permit Receiving Water Limitations are separate, independent requirements with which AAA must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent water quality based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a water quality standard.[20]

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[19] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. However, an exceedance of an NAL may indicate a failure to develop BAT/BCT, and/or an exceedance of a water quality standard.

[20] *Id.*

D. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan.

As discussed above, the initial step to compliance with the Permit and Act is pollution prevention planning and BMP design. Recognizing the importance of planning and design, the State Board has designated the SWPPP as the cornerstone of Permit compliance. The Permit requires dischargers to develop and implement a SWPPP that meets all of the requirements prior to beginning industrial activities. *See e.g.* 1997 Permit, Sections A(1) and E(2). The objective of the SWPPP is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges (and authorized non-stormwater discharges) from a facility, and then develop "tailor-made" BMPs to reduce or prevent pollutant concentrations in storm water discharges. 1997 Permit, Section A(2); 2015 Permit, Section X(C). BMPs described in a SWPPP must, upon full implementation, be designed to achieve compliance with the Permit's discharge requirements. To ensure ongoing compliance with the Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit, Sections A(9)-(10); 2015 Permit, Section X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is an independent violation of the General Permit. 2015 Permit Factsheet I(1).

AAA has failed to undertake a sincere and comprehensive approach to storm water pollution prevention planning, even after having entered Level 1 status for toxic pollutants. AAA has failed, and continues to fail to prepare, implement, review and revise a legally adequate SWPPP. While some of the most concerning shortcomings are detailed below, AAA's SWPPPs generally fail to fulfill the essential policy for which planning is required, and specifically fails to fulfill numerous substantive provisions spelled out in the Permit.

The Site Map fails meet even the most basic requirements outlined in the Permit, including but not limited to, failures to: i) identify all areas of industrial activity; ii) include the locations of any BMPs; and iii) identify all discharge locations. Surprisingly, the Site Map in the 2015 SWPPP is a revised version of the Site Map in the 2008 SWPPP, but was modified to contain even less information.

The 2008 and 2015 SWPPPs fail to contain anything that might constitute a MIP. The SWPPPs are plainly deficient and violate the Permit due to, *inter alia*, failing to describe an adequate sampling protocol, most specifically, failures to: i) require sampling from all discharge locations (or justify sampling location reductions); and ii) require analysis for all pollutants potentially present in storm water discharges. Furthermore, as demonstrated above at TABLE 1, AAA has failed to collect samples required by the Permit and to analyze those samples it did collect for all parameters/pollutants required by the Permit (e.g. titanium and nickel).

The SWPPP also fails to fulfill the Permit's requirements for, among others, the following reasons. First, it fails to complete the pollutant source assessment detailed in Permit Section X(G)(2), on which a SWPPP's efficacy depends. Specifically, the SWPPP fails to adequately disclose, describe or assess the potential for point source and fugitive air emissions to affect the quality of storm water discharges. Second, the SWPPP contains patently inadequate BMPs. Third, the SWPPP fails to contain adequate descriptions of BMPs. The 2015 Permit requires more robust and comprehensive BMP descriptions than did the 1997 Permit, and yet the 2015

SWPPP provides no additional information about BMPs than were contained in the 2008 SWPPP. The 2015 SWPPP does not contain the level of detail required by the 2015 Permit Sections X(H)(4)-(5).

E. Failures to Complete Remedial Actions

First, AAA failed to complete required ERA procedures in 2016, a period during which the Facility's analyses demonstrated NAL exceedances for three constituents: Al avg. 1.16 mg/L, Zn avg. 0.93 mg/L, and Fe avg. 2.18 mg/L. Second, the ERA Level 1 Report and Evaluation prepared at the termination of the 2016-17 Permit reporting year[21] is patently inadequate for, among other reasons, its failure to: a) include any analysis or assessment of inadequacies in the SWPPP and/or SWPPP implementation efforts; and b) identify a single additional BMP. Mr. Bernard Moore's (QISP Cert. No. 085) apparent conclusion is that the 2015 Permit NALs were exceeded because AAA failed to maintain housekeeping logs and inspect the Vac Cad. Indeed, sampling results from the 2017-2018 Permit reporting year prove that the ERA Level 1 Report and Evaluation were inadequate. Regardless of whether the ERA procedures are distinct and independent from the Permit's discharge standards, AAA's ERA Level 1 efforts violate the spirit and letter of the Permit. AAA has been in violation of the 2015 Permit's Section XII regarding Exceedance Response Actions since July 1, 2016.

IV. Persons Responsible for the Violations

Waterkeeper puts AAA on notice that it is the entity responsible for the violations of the Act described above, and that Gerald Wahlin and David Schwan are the legally responsible owners. If additional entities or persons are identified as also being responsible for the violations described herein, Waterkeeper intends to include those entities or persons in this action.

V. Name and Address of Noticing Party

Bruce Reznik
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Los Angeles Waterkeeper
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Santa Monica, CA 90401

Please direct all communications to legal counsel retained by Waterkeeper for this matter:

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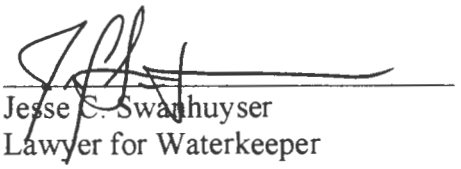
[21] The 1997 Permit and 2015 Permit both define the reporting year as July 1 to June 30.

VI. Relief Sought for Violations of the Clean Water Act

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects AAA to a penalty of up to $37,500 per day per violation for all violations occurring since May 7, 2013, up to and including November 2, 2015, and up to $52,414 for violations occurring after November 2, 2015. In addition to civil penalties, Waterkeeper will seek injunctive relief to prevent further violations of the Act pursuant to Sections 505(a) and (d), and such other relief as permitted by law. *See* 33 U.S.C. §§ 1365(a), (d). Lastly, Section 505(d) of the Act permits prevailing parties to recover costs and fees, including attorneys' fees. *See* 33 U.S.C. § 1365(d).

Waterkeeper believes this Notice Letter sufficiently states grounds for filing suit, and intends to file a citizen suit under Section 505(a) of the Act against AAA for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, Waterkeeper is willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, AAA should immediately initiate those discussions.

Sincerely,



Jesse C. Swanhuyser
Lawyer for Waterkeeper

VIA U.S. CERTIFIED MAIL

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U.S. Department of Justice
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Washington, D.C. 20530-001

Scott Pruitt, Administrator
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U.S. Environmental Protection Agency Region IX
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Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Deborah Smith, Executive Officer
LA Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

APPENDIX 1:
Dates with significant rain in Compton

Permit Term	Month	Day	Year	Precipitation (inches)
2012-2013	May	6	2013	0.69
2013-2014	November	23	2013	0.29
		29	2013	0.23
	December	19	2013	0.11
	February	2	2014	0.14
		27	2014	1.05
		28	2014	2.24
	March	1	2014	1.00
		2	2014	0.17
	April	1	2014	0.25
2014-2015	October	31	2014	0.25
	November	1	2014	0.18
		30	2014	0.30
	December	2	2014	1.21
		3	2014	0.31
		12	2014	1.60
		16	2014	0.41
		17	2014	0.15
		30	2014	0.19
	January	10	2015	0.48
		11	2015	0.50
	February	22	2015	0.70
		28	2015	0.11
	March	1	2015	0.66
		2	2015	0.21
	April	7	2015	0.13
	May	8	2015	0.18
		14	2015	0.69
2015-2016	July	18	2015	0.36
	September	15	2015	2.39
	October	5	2015	0.40
	December	13	2015	0.16
		19	2015	0.26
	January	5	2016	1.61
		6	2016	0.80
		7	2016	0.30
		31	2016	0.43
	February	17	2016	0.58
		18	2016	0.21
	March	6	2016	0.64
		7	2016	0.38

		11	2016	0.52
	April	8	2016	0.14
2016-2017	October	17	2016	0.34
	November	20	2016	0.55
		21	2016	0.20
		26	2016	0.13
	December	15	2016	0.43
		16	2016	1.28
		21	2016	0.50
		22	2016	0.27
		23	2016	1.41
		24	2016	0.14
		30	2016	0.39
	January	5	2017	0.35
		9	2017	0.77
		11	2017	0.39
		12	2017	1.13
		19	2017	0.98
		20	2017	1.51
		22	2017	2.67
		23	2017	0.33
	February	3	2017	0.23
		6	2017	0.88
		7	2017	0.27
		10	2017	0.30
		11	2017	0.21
		17	2017	2.01
	May	7	2017	0.30
2017-2018	October	20	2017	0.10
	January	8	2018	0.32
		9	2018	1.45
	March	2	2018	0.51
		10	2018	0.51
		15	2018	0.17
		16	2018	0.10
		21	2018	0.65
		22	2018	0.56